POWER OF THE COURTS TO REVIEW POLICE REGULATIONS. — By the Fourteenth Amendment to the Constitution, no state shall "deprive any person of life, liberty, or property without due process of law." Each state, however, has the right under its police power to enact statutes for the regulation of public health, morality, or order, and, generally speaking, so long as this power is exercised for these purposes, the constitutionality of the legislative acts will not be questioned by the courts. But when, under guise of furthering these objects, statutes are passed which cannot fairly be said to be for this purpose, they must be set aside as violations of the Fourteenth Amendment.[1] These principles are well recognized, yet their application has been far from satisfactory, since in determining whether a statute is a legitimate exercise of the police power, the courts usually lay down the arbitrary rule that in the absence of anything on the face of the statute which their judicial knowledge shows to be unwarranted under the police power, the act cannot be questioned.[2] On this ground, statutes prohibiting the sale of oleomargarine have been upheld, the courts not having judicial knowledge that it was healthy, and refusing to consider evidence of the fact.[3] So, in a late Kentucky case, a statute making it a crime to sell milk from cows fed on a by-product of brewing called "still slop," was held valid. The court took the position that although such feed might be healthy, the *ipse dixit* of the legislature was conclusive, since there was nothing on the face of the statute which showed, within their judicial knowledge, that it was not in the interest of public health. *Sanders* v. *Commonwealth*, 77 S. W. Rep. 358 (Ky.). Although this decision seems correct, it clearly illustrates the unsatisfactory condition of the law in cases where the subject matter of the statute is not within judicial knowledge. Even if it might have been proved by evidence that still slop was perfectly healthy, so that the statute would not be within the police power, and therefore would really be unconstitutional, the general rule here laid down would prevent the court from recognizing that fact.

The rule is defective, since it affords no constitutional protection in the case of any newly discovered or little known industry, however harmless. Moreover, it limits the extent of the court's power by the extent of their judicial knowledge, and is thus uncertain, for matters not now of common knowledge may later become so. Thus in the more recent oleomargarine cases, the courts seem to have taken judicial cognizance of the fact that oleomargarine is a recognized article of food and commerce within the meaning of the inter-state commerce law.[4] In view of these two defects, it is submitted that to secure perfect protection under the constitution and a uniform rule, this power of reviewing the legislative action should extend to every case in which the statute may be shown by evidence, as well as by judicial knowledge, not to be a permissible exercise of the police power. This is virtually what has been done in New York.[5] And in spite of the general rule, it is in fact by no means uncommon for the courts in cases of this kind to consider the particular facts.[6] If judicial knowledge fails to disclose whether a statute is a legitimate exercise of the police power, evidence

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[1] People *v.* Gillson, 109 N. Y. 389; Town of Lakeview *v.* Rose Hill Co., 70 Ill. 191.

[2] State *v.* Layton, 160 Mo. 474.

[3] Powell *v.* Pennsylvania, 127 U. S. 678; Butler *v.* Chambers, 36 Minn. 69.

[4] Schollenberger *v.* Pennsylvania, 171 U. S. 1; *Ex parte* Scott, 66 Fed. Rep. 45.

[5] People *v.* Marx, 99 N. Y. 377.

[6] Munn *v.* Illinois, 94 U. S. 113, 130; Morgan *v.* King, 35 N. Y. 454.

should be introduced to enlighten the judicial mind. The abuse of power depends on facts, which can be determined as well as any other facts. Only by this means can adequate protection be extended to newly discovered industries, and a line of decisions, unsound in the light of later experience, be avoided by the courts.

THE IMMUNITY OF GOVERNMENT VESSELS FROM ARREST. — It is well established law that, speaking generally, the vessels of a foreign government in the hands of that government's servants are not liable to arrest.[1] The courts have arrived at this result, first, by saying that it would be inconsistent with the nature of sovereignty, if the foreign government were to be deprived of its own property by its own courts. On principles of international courtesy, courts of one jurisdiction should extend this immunity to vessels of another jurisdiction. This reasoning, of course, covers and settles the case where a government vessel is sought to be libelled in the local jurisdiction. It has, accordingly, been assumed that a vessel in this latter case would not be liable to arrest. Two very great authorities, however, have thought that this immunity of government vessels should extend only to those vessels employed in services of an essentially public nature, such as warships and vessels of the revenue service. Sir Robert Phillimore argued that when the ship of a sovereign is engaged in private ventures, the immunity should be regarded as waived.[2] Mr. Justice Story was of opinion that, since the owner in these cases may not be impleaded, there is the greater reason for allowing the action against the ship;[3] a reason, however, which seems to apply equally well to the case of a vessel in public service.

The Judicial Committee of the Privy Council has just had occasion to pass upon these questions. A ferryboat, which they regarded as the property of the crown in the hands of its servants, destined for service in the operation of a government railway, being disabled on the high seas, was towed into port. Their Lordships were of opinion that she could not be libelled for salvage, both because she belonged to the crown, and because it would necessarily implead the sovereign. *Young* v. *Steamship Scotia*, 89 L. T. 374. Waiving any discussion of this second ground, this important case would seem to go far towards settling the law in opposition to the opinions of Phillimore and Story. It is submitted that the position taken by the court is a sound one. The difficulty with the opposite view is jurisdictional, existing in the nature of things. To take property of the government out of its possession is a derogation of its sovereign rights. This derogation is not lessened by holding that the government has waived its immunity, when as a matter of fact it appears by its proper officer and declares that it has not. The argument of Mr. Justice Story does not even attempt to meet this difficulty. Nor are the practical advantages entirely with him. If a government ferryboat can be arrested, so can a government mail wagon. In view of the increasing participation by the government in private industries, convenience as well as principle seems to demand that the immunity be preserved.

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[1] The Exchange, 7 Cranch (U. S.) 116.
[2] See The Charkieh, L. R. 4 A. & E. 59.
[3] See U. S. *v.* Wilder, 3 Sumn. (U. S. C. C.) 308.